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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,334	05/12/2005	Jean-Max Huct	MART0890US	3598
24235	7590	11/28/2007		
LEVINE & MANDELBAUM 444 MADISON AVENUE 35TH FLOOR NEW YORK, NY 10022			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,334

Applicant(s)

HUET, JEAN-MAX

Examiner

Laura A. Bouchelle

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 112

The amendments filed 9/12/07 overcome the previous 112 rejection.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3, 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knotek (US 5531704). Knotek discloses a needle puncture prevention device comprising a needle 20, a protector having articulating panels 38, 40, the panels having holes 28, 64 to receive the needle, the panels forming a space sufficient to contain the distal end of the needle (see Fig. 2), two lateral lugs 60, a disk 30 of hard plastic material (col. 7, lines 9-15) that prevents slipping of the needle. The device comprises a cap 66 for covering the needle.
3. Claim 1 differs from Knotek in calling for the needle to be bent. At the time of invention it would have been an obvious matter of design choice to include a bent needle. The device on Knotek is capable of protecting a bent needle as well as a straight needle as disclosed by applicant.

4. Claim 6 is considered to be product by process claims. These claims are not limited to the manipulations of the recited steps, only the structure implied but the steps. The patentability of a product does not depend on its method of production. See MPEP 2113.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knotek as applied to claims 1, 2 above, and further in view of Rosato et al (US 5951522). Claim 4 differs from Knotek in calling for means for selectively keeping the lugs applied against each other. Rosato teaches a needle safety enclosure having locking members 98 that keep the members applied against each other to maintain the needle in the covered position to prevent accidental sticks with a contaminated needle. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Knotek to include locking members as taught by Rosato to prevent the used needle from becoming exposed after use.

Response to Arguments

6. Applicant's arguments filed 9/12/07 have been fully considered but they are not persuasive.

7. Applicant argues that Knotek does not teach a bent needle and there is no suggestion to use a bent needle with the device. The examiner disagrees. It is well known in the art to use both bent and straight needles and it would be a matter of design choice to use either a bent or straight needle and applicant does not disclose that using a bent needle has any benefit over using a straight needle.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Laura A Bouchelle
Examiner
Art Unit 3763



EXAMINER
SEP 20 2006
10/562,334